South Carolina Department of Juvenile Justice

SC Senate Select Committee on Raise the Age

June 25, 2019

Raise the Age Implementation

Senate Bill 916 - Raise the Age

- "Raised the Age" for SC Family Court jurisdiction
- Most 17-year-olds (those charged with offenses that carry 10 years or less) will be part of the juvenile justice system rather than the adult criminal justice system – cases processed in Family Court rather than Magistrate/Municipal or General Sessions Court
- Signed by Governor Haley on June 6, 2016

RTA Implementation

- DJJ fully supports RTA and inclusion of older youth in juvenile justice system – national best practice, only 4 states remain with all 17-year-olds in adult jurisdiction
- DJJ also supports research-based reforms to the juvenile justice system to accompany implementation of RTA

Raise the Age – Reforming Juvenile Justice

- DJJ is hopeful that, through the leadership of the Senate Select Committee and efforts of juvenile justice stakeholders, South Carolina will build on the experience of other states across the country that have successfully expanded juvenile court jurisdiction to include older youth by combining "raise the age" implementation with research-based reform to the juvenile justice system overall.

Raise the Age – Reforming Juvenile Justice

- "Along with raising the age, a developmentally appropriate juvenile justice approach diverts young people from the justice system, addresses a youth's mental health challenges in the community, and reduces the use of pretrial detention and post-adjudication confinement."

Source: Raise the Age /Justice Policy Institute

Road Map to Raise the Age – A National Perspective

- "States can contain costs and enhance public safety while absorbing . . . 17-year olds into their youth justice systems by:
  1. Expanding the use of diversion
  2. Making probation and aftercare approaches more effective
  3. Addressing young people's mental health needs outside the deep end of the system
  4. Reducing the use of pretrial detention
  5. Reducing reliance on facilities, and focusing resources on community-based approaches
  6. Keeping young people safe by complying with PREA
  7. Improving juvenile justice systems' management of resources, and strengthening strategies to serve young people more effectively"

Source: Raise the Age /Justice Policy Institute

RTA Implementation

- RTA law is PROSPECTIVE – it applies to youth whose date of offense is on or after 7/1/19.
- Youth whose date of offense is prior to 7/1/19 are not impacted by any statutory changes related to Raise the Age.
- RTA law will apply to all youth whose date of offense is on or after 7/1/19, not just 17-year-olds.

RTA Implementation

- Date of offense determines what law applies:
  - Youth whose date of offense is prior to 7/1/19 are processed in the Family Court system under current law.
  - Youth whose date of offense is on or after 7/1/19 are processed in the Family Court system under RTA law.
- This means that Family Court youth will be processed under both existing law and RTA law for the next several years, until youth with offense dates prior to 7/1/19 age out of our system.

Which law applies?

Example: 13-year-old comes to court on July 10, 2019 and pleads guilty to an offense that occurred on April 6, 2019	Date of offense = 4/6/19	Processed under current law—this youth is eligible to be placed on probation up to his/her 18th birthday or committed to DJJ for an indeterminate period of time, not to exceed his/her 21st birthday
Example: 13-year-old comes to court on July 10, 2019 and pleads guilty to an offense that occurred on July 6, 2019	Date of offense = 7/6/19	Processed under RTA—this youth is eligible to be placed on probation up to his/her 20th birthday or committed to DJJ for an indeterminate period of time, not to exceed his/her 22st birthday
Example: 17-year-old charged with Assault & Battery 3rd on July 10, 2019 for an offense that occurred on June 25, 2019	Date of offense = 6/25/19	Processed under current law and charged as an adult in Magistrate Court—this youth is eligible to be fined up to $500 or imprisoned for not more than 30 days, or both
Example: 17-year-old charged with Assault & Battery 3rd on July 10, 2019 for an offense that occurred on July 6, 2019	Date of offense = 7/6/19	Processed under RTA and charged as a juvenile in Family Court—this youth is eligible to be placed on probation up to his/her 20th birthday or committed to DJJ for an indeterminate period of time, not to exceed his/her 22st birthday

Comparison of Current Law to Raise the Age Law

Family Court Jurisdiction

SC Code § 63-3-510 and § 63-19-20

~~current law~~
RTA law

- Who is considered a juvenile for criminal justice purposes?

  -person who is under ~~17~~ **18** years of age at the time of the offense

- Court's jurisdiction ends when person turns ~~21~~ **22** years of age

Family Court Jurisdiction

SC Code § 63-19-20

~~current law~~
RTA law

- EXCEPTION – "Child" does not include a person ~~16~~ **17** years old who is charged with:
  - -Class A, B, C, or D Felony, or
  - -Felony that provides for 15 years or more
- MUST be charged as an adult, and any accompanying charge(s) must be processed in adult court as well
- Offense(s) MAY be remanded to Family Court at the discretion of the Solicitor

Jurisdiction of the Family Court
SC Code § 63-3-520

- Concurrent Jurisdiction with the Magistrate/Municipal Court for traffic offenses and wildlife offenses for persons under seventeen years of age
- This statute was not amended by S.916

Status Offenders

- Compulsory School Attendance Law (SC Code § 59-65-10) provides that child must attend school until 17th birthday
- This statute was not amended by S.916
- Therefore, 17-year-olds can be charged with status offenses (run away, incorrigible) for conduct occurring on or after July 1, 2019, **except for truancy**

Who Can Be Waived to Adult Court?

~~current law~~
RTA law

SC Code § 63-19-1210

- ~~16~~ **17** years old and charged with an offense that carries 10 years or less;
- 14-~~15~~ **16** years old and charged with a Felony that carries 15 years or more;
- 14-~~16~~ **17** years old and charged with Weapon on School Grounds, Unlawful Carrying of a Handgun, ~~Assault and Battery of a High and Aggravated Nature~~, or Distribution of Drugs Near School;
- Charged with Murder (prosecutor must file waiver motion within 30 days of filing petition)
- 14-~~16~~ **17** years old and charged with offense that carries 10 years or more and has two prior adjudications for offenses that carry 10 years or more – ~~automatic~~ **requires full investigation and hearing**

Detention

~~current law~~
RTA law

SC Code § 63-19-810 and -820

- Who is eligible for detention?
  - 13-~~16~~ **17** year olds
    -always a law enforcement decision
  - 11-12 year olds
    -court order required for detention
  - Age 10 and younger
    -cannot be detained in secure confinement for any reason

Court's Dispositional Options

~~current law~~
RTA law

SC Code § 63-19-1410

- Probation
  - Must terminate on or before youth's ~~18th~~ **20th** birthday
- Commitment to DJJ
  - Determinate Period – up to 90 days
  - Indeterminate Period – not to exceed youth's ~~21st~~ **22nd** birthday (released on parole which must terminate on or before youth's ~~21st~~ **22nd** birthday)

Transfer to SC Dept. of Corrections

~~current law~~
RTA law

SC Code § 63-19-1440

- If they have not been released, youth committed to DJJ will be transferred to SCDC on their:
  - ~~17th~~ **18th** birthday – violent offense
  - 19th birthday – all other offenses

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- Youth remain under the jurisdiction of the Juvenile Parole Board or DJJ Release Authority after transfer and can be on parole until their ~~21st~~ **22nd** birthday

Driver's License Suspension

SC Code § 63-19-1420

~~current law~~
RTA law

- Youth adjudicated delinquent for status offense can have driver's license suspended until ~~17th~~ **18th** birthday
- Youth adjudicated delinquent for criminal offense can have driver's license suspended until ~~18th~~ **20th** birthday

Expungement

SC Code § 63-19-2050

~~current law~~
RTA law

- Process by which certain youth can have all official records of involvement with the juvenile justice system destroyed
- Person must be ~~17~~ **18** years of age or older

Housing of 17-year-olds -- Detention

- S.916 did not amend the South Carolina Constitution or related state Minimum Standards for local detention facilities.
- The SC Constitution still provides that persons 17 and older must be housed separately from persons under 17.
- There are bills pending in the Legislature (S.46/H.3450) to place this constitutional question on the ballot at the next general election.

Housing of 17-year-olds -- Detention

- RTA law does not impact pre-trial housing of adults, including 17-year-old adults. DJJ does not house pre-trial adults 17 and older.
- DJJ will continue to house, for the benefit of local governments who are not approved to house persons under 17 in their county jails, youth under 17 charged as adults until such time as they turn 17.

Housing of 17-year-olds -- Detention

- DJJ will defer to each local jurisdiction to seek legal guidance and make their own determination about where they will house 17-year-olds who are charged as a juvenile (17-year-olds charged with offenses that carry 10 years or less and have offense dates after 7/1/19).
- Local governments who choose to house 17-year-old juveniles at the DJJ Detention Center will be charged, as they are for every juvenile, a $50/day per diem and remain responsible for providing transportation of those youth to and from the DJJ Detention Center.

RTA Implementation

- DJJ policies that are impacted by RTA are being updated and will be published as soon as possible – new policies will reflect that, for the next several years of this transition period, DJJ will work with youth under both existing law and the new RTA law.
- Practices and programs are also being updated to account for the additional population of older youth that will be referred to DJJ as a result of RTA.

RTA Implementation

- Since seventeen-year-olds will be referred to DJJ county offices for offenses that occur on or after July 1, 2019, new referrals/youth will gradually enter the juvenile justice system as new offenses are committed in the days/months after 7/1/2019.
- These 17-year-olds, like all other youth referred to DJJ, will first impact DJJ county offices through intake. Solicitors may refer qualified youth to diversion programs, or Solicitors will file petitions on these youth and schedule them for Court.
- As these 17-year-olds go to Court, a Family Court Judge may order that they cooperate with a community evaluation or a secure evaluation or may place the youth on probation (which may include residing in a community-based residential placement) or commit the youth to DJJ on a determinate or indeterminate sentence.

RTA Implementation

- It is anticipated that the area of DJJ that will be most immediately impacted by 17-year-olds will be DJJ's Juvenile Detention Center (JDC) – two reasons why:
  - 17-year-old juveniles (those who commit an offense that carries 10 years or less after July 1, 2019) will be eligible immediately for detention by law enforcement, and
  - DJJ Juvenile Detention Centers' Average Daily Population is very close to the rated capacity of that facility (the ADP for FY17-18 was 68 youth and the rated capacity is 72 youth)

17-year-olds and JDC

- There are specific State Minimum Detention Standards that apply to SC facilities that house juveniles who are detained pre-trial, including minimum staff/youth ratios, which the Department must comply with in order to house additional detention youth.
- In the absence of additional funding for a facility or additional staff to serve these 17-year-old detained juveniles, and having not been informed by any local governments in SC that they have plans to construct or staff additional juvenile detention facilities at the local/regional level, DJJ management is working to develop strategies to safely house these 17-year-olds charged as juveniles.
- In doing so, we must consider staffing levels and other operational considerations that impact the safety of youth and staff.

Juvenile Detention Reform

- One strategy utilized in other states to manage increased detention populations is reform measures at the local level to decrease reliance on secure detention for youth charged with low-level offenses.
- Director Pough has contacted the Annie E. Casey Foundation's Juvenile Detention Alternative Initiative (JDAI) program to invite them to South Carolina to meet with state and local leaders, including the Senate Select Committee, to explore opportunities for JDAI to assist local jurisdictions in South Carolina address detention reform.
- According to Casey, "[p]articipating JDAI sites have reduced their average daily population in detention by 44 percent since launching their JDAI efforts. . . in ways that protect or even enhance public safety."

Pre-Trial Detention Youth – CY2018

- **2,043** youth detained pre-trial in juvenile detention facilities state-wide
- **12 percent** (240) of those youth were detained for a Violent offense

Youth Committed to DJJ – CY2018

- **1,375** juveniles committed to DJJ, either for secure evaluation or final commitment
- **7 percent** (92) of those youth were committed for a Violent offense

DJJ Authority to Release Youth

- DJJ also has authority under state statute and proviso to release certain low-level youth from secure custody and residential programs.
- These provisions have been part of SC law for approximately 10 years.

SC Code §63-19-1440

"The department is authorized to allow any child adjudicated delinquent for a status offense, a misdemeanor offense, or violation of probation or contempt for any offense who is temporarily committed to the department's custody for a residential evaluation, to reside in that child's home or in his home community while undergoing a community evaluation, unless the committing judge finds and concludes in the order for evaluation, that a community evaluation of the child must not be conducted because the child presents an unreasonable flight or public safety risk to his home community."

Proviso 67.13

"In order to avoid unconstitutional levels of overcrowding and other unconstitutional conditions from occurring in facilities operated by the department and in residential programs operated for the department, the number of children housed in residential placements (either committed to the custody of the Department of Juvenile Justice or who are under the department's supervision) shall not exceed the number of beds available to the department to house them. Should appropriation reductions necessitate that the department close any additional facility, program, or housing unit it operates, or to be unable to fund any additional residential program operated for its benefit, the department is authorized and empowered to release from its residential placements sufficient numbers of children committed to its custody or supervision for a status offense, a misdemeanor offense, other than Assault and Battery of a High and Aggravated Nature and Assault with Intent to Kill, or for violation of probation/contempt of a status offense or a misdemeanor offense, other than Assault and Battery of a High and Aggravated Nature and Assault with Intent to Kill, so that the number of children in its custody or under its supervision and placed in these residential placements does not exceed the number of housing units/beds available to properly house those children. No child adjudicated delinquent for a violent crime as defined in Section 16-1-60 of the 1976 Code, a felony offense as defined in Section 16-1-90 of the 1976 Code, or a sexual offense shall be released pursuant to this proviso."

DJJ Authority to Release Youth

- DJJ has not exercised this release authority to date
- DJJ only plans to do so if population levels in secure or community-based residential facilities exceed capacity to safely operate those facilities
- Any release will be considered on a case-by-case basis as the need arises and will be implemented in accordance with consistent standards

Who are these Youth who are Housed in Out of Home Facilities/Placements?

- 10% of cases referred to SCDJJ in FY17 involved violent or serious offenses
- Approximately two-thirds of SCDJJ's budget was spent on out-of-home placements for youth
- The average daily population of youth in an out-of-home placement was 743
- Most of these youth were charged with or adjudicated delinquent for a low-level offense

Pre-Trial Detention Youth – FY2017

- 37% of youth placed in a secure pre-trial detention center were charged with a felony offense

- The remaining detained youth were charged with:
  - misdemeanor offenses (28%),
  - status offenses (4%), or
  - placed in detention for an administrative reason, e.g. pick-up order for a technical violation of probation (31%)

Youth Committed to DJJ – FY2017

- 38% of all youth committed for a residential evaluation were adjudicated delinquent for a felony offense
  - Only 23% of youth who received a residential evaluation received a commitment order following their evaluation
- 28% of all youth committed to SCDJJ for a determinate or indeterminate sentence were adjudicated delinquent for a felony offense
  - The most common reason for commitment to SCDJJ is youth misconduct that does not rise to the level of a criminal offense: 7 of the top 10 commitment "offenses" are a technical violation of probation

RTA Implementation

- Per S.916, DJJ submitted a budget request to the General Assembly the last two years that reflected the estimated fiscal impact to the Department of implementing RTA.
- The budget request analyzed the impact RTA will have on the functions and services mandated by law to be provided by SCDJJ:
  - Services provided in the community (for example, prevention and diversion services, pre-court intake and assessment services, non-residential evaluation services, probation and parole supervision services, victim services, and community-based residential placement services), and
  - Services provided in secure facilities (for example, secure pre-trial detention services, secure residential evaluation services, and secure commitment services – all of which include educational, vocational, medical, social work, psychological, classification, dietary, recreational, programmatic, chaplaincy, and safety/security services)

Proviso 67.14 – FY2019-20 Budget Bill

"The department must use carry forward funds to implement Act 268 of 2016 by contracting in the current fiscal year with local child-serving non-profit organizations and Judicial Circuit Solicitor's offices for community-based diversion and intervention services. The department shall give preference to multi-agency and organizational collaborations that include stakeholders from the Family Court, Department of Education, Public Defenders' Offices, the Department of Mental Health, the Department of Social Services, and community based non-profits that utilize best practices."

RTA Implementation – Proviso 67.14

- DJJ currently contracts with Circuit Solicitors for diversion programming (Arbitration)
- The amount of carry forward funds that will be available to implement this proviso will not be determined until the end of this fiscal year.
- Carry forward funds are one-time, non-recurring funds.

Proviso 67.14 Implementation

- DJJ scheduling Think Tank meeting in July 2019
- Gather stakeholders to provide input and suggestions of programs they can offer at the local level to divert additional youth and/or provide intervention services
- Director Pough met with the elected Circuit Solicitors on June 13th to discuss RTA and Proviso 67.14 – asked each Circuit Solicitor to nominate one representative per Circuit to serve on Think Tank

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JUVENILE JUSTICE